
Comments and Recommendations

Hayward Self Certification Draft Ordinance and Proposal 4-2014

Cost/Benefit of Participation

For the property owners who would participate in the self-certification program, providing rental housing is a real multimillion dollar business with thin profit margins. They will evaluate the cost of participation and measure it against the resulting tangible benefits. As it stands, self-certification program compliance has the potential to triple compliance costs for owners. Without a tangible net benefit, a self-certification program is likely to be underutilized. In our opinion, recognition by the city as a self-certified property will have little if any tangible benefit. A reduction in fees is the most tangible way to provide benefit.

Program Entry Threshold

If the program has the ability to provide tangible benefit to participants, we anticipate that many owners/operators will want to participate. As noted by the Mayor, the program threshold requires that properties have satisfactorily completed any noted corrections on rental property.

Raising the proposed threshold would ensure that only owners who are qualified to comply with the ordinance would be admitted. But many of the "violations" cited are minor and are easily corrected. Increasing the number of cleared cycles to two, for owners with inspection history, would ensure that there is no history of serious repeated violations.

Self-Certification on Property Transfer

Self-Certification applies to a property – it indicates that a property is in compliance. We recommend that when a property is sold, the new owners should notify the city of ownership change. If the owner does not have a history of rental property neglect or abuse, they should be allowed to continue with a property that is maintained.

Additionally, resident communications on a regular basis (perhaps every six months) to residents reminding them of the program and requesting any needed repair requests could facilitate compliance from residents and reduce the number entries into the unit. This would foster an atmosphere of cooperation between the owner and resident as they work together to comply with the program.

Regular Inspection Program – Use of Affidavit Process to Reduce Costs/Re-Allocate Resources

The majority of Hayward rental housing operators in the mandatory inspection program have proven trustworthy and reliable when it comes to completing any minor repairs identified as a result of a mandatory inspection. One way to reduce costs - and/or allow the city to re-allocate resources to problem properties - would be to allow these owners to submit an affidavit indicating that identified minor repairs have been completed. This would eliminate unnecessary progress checks for assuredly compliant properties and allow staff to attend to properties that need more scrutiny.

Self-Certification Checklist

Any checklist prepared for self-certification should also include code citations so that an owner can be assured of identifying and properly complying with needed repairs. It would also be helpful if the city could make all codes available through their website so that owners can properly reference the code authority and make proper corrections.

Ordinance Specific Sections

Section 9-5.302 (page 227)

This section does still contain the language we found problematic and that resulted in the litigation over the prior program. "Owners, managers and tenant shall allow for the inspection of these units." The trial court did say that was okay to keep this provision, because of how the later section on Notice and Entry had been revised. However, since they are revising the entire ordinance, why not fix this part, since everyone agrees about the actual result – i.e., who can consent to entry of what part of the property. While the draft does say that if the person refuses, a warrant can issue, it would be helpful if it were clarified who consents to what. In other words "the owner/manager shall allow for inspection of vacant units, exterior and interior common areas, and all other areas of the property within the owner's control. Access to an occupied unit shall be granted by the tenant(s)."

Perhaps the best option might be to give the tenant the choice of:

- (1) Inspection (by the owner)
- (2) Filling out a checklist saying there are no problems, or if the tenant says there are problems that the owner repairs them promptly and executes a affidavit of completion
- (3) Making a complaint (to the owner) which may result in inspection by the owner or code enforcement.

Under this scenario, the owner would annually send a form to the tenant asking if there are any problems and offering an inspection. The tenant would have to send it back with one of three choices marked. It would be set up in such a way that failure to respond would indicate that there are no problems, no inspection needed for self-certification.

If there is concern that tenants will be afraid to complain, regular audits of records on the property will reduce the likelihood that tenant repair requests are ignored.

b. Qualifying inspections (pages 228-229)

This provision is problematic and should be eligible for the self certification process outlined above. If a property has not been inspected by the City in the last 10 years, participation in self-certification will also require inspection of 20% of the units by code enforcement. This provision should include a requirement that notes the city could issue warrants if tenants do not comply and they deem it necessary. Otherwise, the refusal of even a single tenant could derail an owner's participation and waste city resources.

Section 9-5.308 Notice and Entry (page 230)

This provision states that the City shall serve written notice of all inspections, but it only applies to the inspections by code enforcement. The ordinance could use some clarification of which provisions apply to the self-certification part and which apply to the regular inspection program.

The provisions about the owner making a good faith effort to obtain tenants' consent should be repeated in all provisions discussing entry.

This section needs clarification of when the no access fee will be assessed and against whom. When lack of access is due to tenant's refusal to allow entry perhaps the fee should be assessed against the tenant. This provision should apply to all parts of the ordinances (i.e., to the 20% inspections for self-certification).

Section 9-5.506 Annual Report (page 233)

It may be helpful for this report to also collected information about any problems related to entry and whether observed violations were the landlord's responsibility, or due to the tenant's violation of tenant's duties under state law.